

MAGOON BEATEN IN LEGAL DUEL

CLIENT BARRED IN CONDEMNATION
SUIT, RULES JUDGE
CLEMONS.

(From Thursday's Advertiser.)

Through a ruling made by Judge Clemons in the United States district court yesterday, following one rendered earlier in the afternoon, J. Alfred Magoon's client, Amy Helene Thompson, a minor, was found to have no standing in the Walkiki condemnation suit. In other words, Magoon is out of it entirely.

The attorney fought hard to obtain for his client the right to share in whatever sum the jury decides shall be paid for the land which the United States wants for fortification purposes, but he failed to make out a case. Attorney Olson, of Holmes, Stanley & Olson, proved to be more than a match for Magoon and met his contentions with arguments and authorities which Magoon was unable to prove to the court should be overridden.

Mr. Olson contended that a decision in Vol. 214, U. S., decided in 1908, entitled Gray versus Noholoa, and a decision of the supreme court of Hawaii in the case of Nohokoo versus Noholoa, in ninetieth Hawaii, 667, barred Magoon's client, Amy Helene Thompson, from any recovery or interest in the case. Attorney Magoon contended that neither the circuit judge in probate, the territorial supreme court, nor the United States Supreme Court, that confirmed the construction of the Hawaiian appellate court on the Noholoa will, had the power to dispose of the title of the land in question under the proceedings in probate.

Rules Against Magoon.

Judge Clemons ruled that the matter was res judicata, even if the will of Hikihi Holbrook, which was included in this case, had been improperly translated in the original probate proceedings, and even if, in the action to quiet title in the first circuit court, the judge, as claimed by Magoon, founded his decision on an error either of law or of fact.

The federal judge, however, does not pretend to pass upon the question of the translation of the will, nor upon the correctness of any decision of any court of the territory, but feels compelled, under the law, to respect the judgment of a court which had jurisdiction not only of the parties, but of the subject matter.

During a discussion following the decision Attorney Magoon remarked: "I do not think your honor's ruling conclusive," at which a smile went round the courtroom.

The next step in what descriptive writers call the "long drawn out proceedings" was the matter of proof of claims. Attorney Olson asked the court to direct that Magoon proceed with his proof on behalf of his client, Miss Thompson.

Argument as to Precedence.

Attorney Withington, who represents the interests of his partner, Mr. Castle, and others, objected. He declared that the government ought to proceed first. Judge Clemons remarked that the question before the court was as to the disposition of Mr. Magoon.

"I desire to ask that the regular order be proceeded with," insisted Mr. Withington. "It is incumbent on the government to proceed," he added.

Judge Clemons: "We will first dispose of all the parties who can be disposed of and get them out of the way once and for all."

Mr. Magoon declared that whatever Mr. Olson's client got his client was entitled to one-half. He thought Mr. Olson should make the first proof.

Mr. Olson said Mr. Magoon should first offer his proof. The latter would have to first offer evidence of his title, which would include translations of the will of David Noholoa, which he would at once object to, and under the judge's ruling, could not be admitted. He thought the time had come when it had been shown that Magoon's client had no standing in the court, and it would help the expeditious disposition of the case if Magoon be directed to offer proof first. It would then be determined once and for all whether the Thompson minor had any material claim.

Minor Is Barred.

Judge Clemons said he had made a ruling the inevitable conclusion of which was that Magoon would be out of the case. He therefore directed that the latter should proceed with his proof.

Charles K. Hopkins, Hawaiian interpreter, then was called by Attorney Magoon, who asked him if he had made a translation of the Noholoa will.

Attorney Olson instantly objected to the question as immaterial. He said Mr. Magoon's client was barred.

Attorney Magoon said he offered to prove by the witness that he made the translation and that it was correct; further that it was a different translation from that which was made for the circuit court and that it showed that part of the property sought to be condemned by the United States was now really owned by his client.

Judge Clemons sustained the objection and noted an exception to his ruling which was made by Magoon. The latter offered further proof along the same lines, all of which was objected to, the objections sustained and exceptions noted.

Mr. Olson then asked that Mr. Withington, attorney for W. R. Castle and others, lessees of land concerned in the proceedings, offer their record of title under the lease and documents subsequent to the lease.

Meaning of "Otherwise."

This was done. This lease is dated 1890 and there is a question of the construction of it arising out of the use of the word "otherwise." The lease provides for damages or compensation to the lessee in the event of condemnation of the property for roads, streets, highways, or "otherwise."

Mr. Olson, for the lessee, contended

TIPS FROM THIS PORT STRAIGHT

GREAT FORTUNE IN OPIUM
SEIZED IN WATER TANKS OF
THE AMERICA MARU.

(From Thursday's Advertiser.)

Honolulu supplied the information to J. W. Wilkie, chief of the federal secret service, which enabled him and his special agents to locate nine hundred tins of opium aboard the T. K. K. liner Maru at San Francisco on June 2, just after that vessel arrived there from this port. The call states that according to the cable tip to Wilkie there were thirteen cylinders containing 100 tins each and the message told exactly where he could find the dope.

Wilkie has been working on the problem for the past six months and there is reason to believe there will be other important seizures in the next few weeks. Wilkie has had an agent in Honolulu for some time and it is believed he supplied the information which led to the seizure of opium which at Honolulu figures would give a value of nearly \$75,000. In San Francisco the value is given at \$27,000.

The Wilkie man now in Honolulu has been aboard nearly all the transpacific steamers here and was aboard the Persia the afternoon she sailed for San Francisco, and there is a likelihood that that vessel will be subjected to a search for opium as it was felt when she was here that there was a fortune in poppy juice on that vessel.

The San Francisco papers make reference to the fact that Collector Stackable searched the vessel at Honolulu and missed a quarter of a ton of the opium. Opportunities for searching a steamer here are not so good as the San Francisco authorities have. The vessel is here for only eight or nine hours, is filled with merchandise, while the cabins are occupied by travelers. In San Francisco all travelers quit the ship, taking bag and baggage, until the staterooms are mere shells. The cargo is removed and the cabbies can be looked into and probed. The local collector has done well, considering so many drawbacks to prevent big seizures.

Knew Where to Look.

The discovery of the opium was no accidental find, but the fruit of patient detective work on the part of J. E. Wilkie, head of the federal secret service and superintendent of special treasury agents, says the call. It was by Wilkie's orders, telegraphed from Washington, that Special Agents W. H. Tidwell and J. W. Smith boarded the America Maru shortly after its arrival, and with Inspectors Benninger and Enlow of the customs-searching force to guide them, climbed down into the forepeak from a fresh water tank and discovered the dope.

That it was the intention of the smugglers to throw the opium overboard, to be picked up and taken ashore by confederates, was evident from the manner in which it was packed. In the way of packages this latest seizure was a revelation to the customs inspectors.

The opium was in nine metal cylinders, each one of which contained 100 five-tin tins of opium. At the top of each cylinder was a round hole big enough to admit a man's hand. Over this hole was screwed a metal cap, and by means of rubber gaskets and putty the opening had been rendered water-proof. There were two handles on each cylinder, and to one handle on each cylinder was a stout rope, to which a towline could be made fast.

Cylinders in Water Tank.

These cylinders were stowed away in the forward fresh-water tank, which is far down in the nose of the ship, below the water line. To reach the tank it is necessary to crawl through a succession of manholes. One cylinder was found right against the ship's stem. The others were in the after part of the tank, lashed together.

It was with considerable difficulty that the inspectors carried the heavy packages from their hiding place to the main deck. There the caps were screwed off and every cylinder was found to be filled to the brim with the best brand of hop, which is now worth \$30 a can in Chinatown.

Guided by the rays of their electric flashlights, the party crawled until it reached a manhole set in the damp floor. This was jerked up and another dark and gloomy depth was revealed. This was the tank holding the fresh water supplied to the passengers and crew during the trip across the Pacific.

A flash of light sent into the tank showed that the water was low, and Inspector Enlow lowered himself into the tank. The rays of his flashlight darted hither and thither in the gloomy place, and soon he yelled:

"It is here, boys, it is here!" Down went the others of the squad, and Enlow pointed out the find. Jammed up in the very prow of the vessel was a

that the use of the word "otherwise" did not mean for fortification purposes and argued along lines which would give his client a larger recovery of damages.

Mr. Withington claimed that the word was general in its application, his object being to limit the damages which Mr. Olson's client would obtain and increase the amount for damages, if any, which his own clients would receive. He also stated that his clients were claiming \$2500 damages with reference to the rest of the premises not included in the land which the government seeks to condemn.

A snap of a subdivision of the property, which Mr. Withington wished to file as an exhibit, was objected to by District Attorney Breckons on behalf of the government. He said it did not show the ground as it is, but as it is intended to be. He also objected that it was not part of the land sought to be condemned.

Judge Clemons reserved his ruling on this matter until the court resumes this morning at ten o'clock.

WALKER'S COOLNESS SAVED HIS LIFE IN HILO ACCIDENT

**Eyewitness Describes the Thrill Hiloites Received
in the First View of a Birdman
in Action.**

(Mail Special to The Advertiser.)

HILO, June 13.—The wonders of the mastery of man of the air, and the imperfection which still makes flying a hazardous venture were shown at Hilo last Saturday afternoon. For several minutes Aeronaut Walker soared several hundred feet above the ground in his Curtiss biplane. A moment later his machine lay in a lauhala tree, a tangled wreck, while the birdman himself escaped death merely



TWO VIEWS OF THE WRECK OF
WALKER'S SIX THOUSAND DOL-
LAR CURTISS MACHINE.
—E. Fernandez photos.

through his coolness and good judgment, coupled with not a small amount of good luck.

On Saturday afternoon conditions seemed very good indeed for the flight. There was not much wind, and the rain, which had been falling throughout the forenoon, had ceased. A fair sized crowd had gathered to see the performance.

Shortly after two o'clock Walker decided to test his machine by taking a trial "hop" across the field. Accordingly he started from the side of the field outside the paddock and flew, rising only a few feet above the ground, diagonally across the field. At the opposite corner Adossides had stationed himself and some volunteers to catch the machine should she "run away," but Walker had it under perfect control, and the trial was pronounced by him and Adossides to be a perfect success.

A few minutes before three o'clock Walker announced that he was ready to go aloft. To the casual observer the start seemed perfect, for the machine rose steadily from the ground and soared down the field, rising gradually above the tops of the big mango trees near the railroad station at Waiak. However, a number of those having experience with gasoline engines, particularly those who were stationed where the machine had to fly over them, could hear that the engine was "missing," even just after the flight had started.

Mrs. Walker, who was seated near

tubular metallic case about the size of a ten-gallon milk can,

Fastened to Supporting Beam.

"And here is the rest of it," cried Enlow triumphantly, pointing to a corner of the tank, where, fastened to a supporting beam, were eight similar-sized cans. The seizure was complete as far as the advice of the officials went.

The work of removing the big tins of drug, each weighing over fifty pounds, was no easy one, and caused the finders to conjecture how the smugglers ever got them stowed away without nearly every one on the steamer being aware of their movements.

The seizure caused somewhat of a sensation among the passengers and the officers and crew of the vessel. Captain Stevens and Chief Officer Sawtooth rendered the searchers every assistance in getting the goods out of the hold.

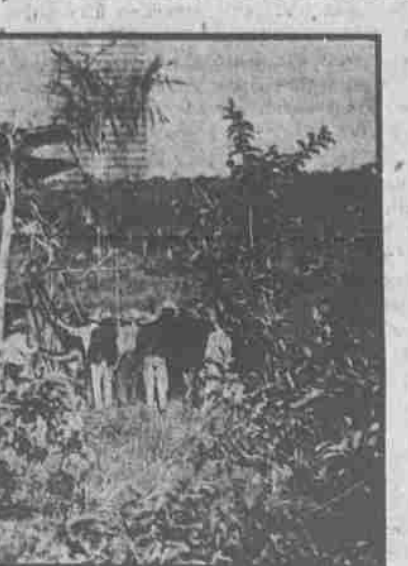
There was a variety of expressions on the faces of the passengers when they learned that the cans of opium had been taken from the water tank from which they had been drinking daily in the voyage across, although there was some consolation in the fact that the cans were sealed and that there had been no leakage.

A GOOD FRIEND.

No one can have a better friend when troubled with colic or diarrhoea than Chamberlain's Colic, Cholera and Diarrhoea Remedy. Ever since the middle aged man of today was a child it has been going about doing good work until its fame has spread to nearly all parts of the civilized world and stands unrivalled for its prompt cures. It never fails to give relief. For sale by all dealers. Benson, Smith & Co., Ltd., agents for Hawaii.

the starting point, evidently had some presentiment, or possibly she also was able to detect that there was something wrong, for her nervousness became more and more apparent, though she tried bravely to conceal it, and in spite of her horror when she saw her young husband and his machine dash from view into the tree, she held herself in hand with admirable self-control, though it was evident that she was suffering acutely.

Walker swung the machine in an easterly direction and then swerved off towards Waiak, circling almost as far



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—E. Fernandez photos.

as the waters of Reed's Bay, and then swinging back, over the railroad depot towards the track. At this point he was maneuvering desperately trying to gain, by elevating his rudder, a higher stratum of air in order that he might bring his practically inert machine back to the track and safety, but he did not have the elevation necessary, and, after he had been in the air only a couple of minutes, his downward glide towards the track began in earnest.

For a moment it was a question whether the machine would be able to clear the high board fence which separated the clear ground from the rough-a country outside the track. That was an exciting moment when the hundreds of spectators held their breath, though hardly realizing that in those seconds the life of the brave young

man was lying in a balance which a breath of wind might sway. Then the machine collided with a lauhala tree standing about thirty feet from the fence. There was a crash, a tearing and rending of material. The light planes remained in view suspended to the topmost boughs of the tree, but the aeronaut and the heavy motor crashed to the ground, and were hidden from view by the fence.

This was really the most agonizing moment of the entire accident, for during the actual fall one could, at least, see what was going on, but now the birdman was hidden from view, and imagination pictured him mangled and bleeding on the lava.

Then Walker appeared on the top of the fence, and a cheer of admiration and congratulation went out to him. For a moment he sat on his perch, expressing his views with regard to gasoline engines and Curtiss biplanes with considerable force and fluency.

Then he hastened to his wife to assure her that he was still alive and sound. Adossides went to the machine which was hanging in the tree, much like the kite of the small boy, sprawling and twisted, a tangle of wires and splintered wood. He pronounced the machine a wreck, hardly worth repairing. At least, it would take considerable time and money to make it such that it could be used again. He stated that the pecuniary loss was not inconsiderable, as Walker had paid \$5000 for the machine, which was the catalogue price.

Adossides gave the following expert explanation of the accident. The trouble started with the suction pipe, and the moment the machine left the ground the motor began missing. When Walker had reached a height of about 250 feet, the engine was practically useless, and his entire aim was to return to the field. He had to get back there to land in safety, as the country all around the place is so rough as to be extremely dangerous.

The aeronaut first tried to get sufficient elevation for a long glide by elevating his rudder, but this failed. The proper stunt under such circumstances would be to try a long sweep to the ground. He consequently did the only thing left for him to do. He dipped his rudder, thus forcing the front of the machine up into the air, and the whole thing swept downwards with the rear towards the ground and the front tilted upwards, like a prancing horse. The result was that when the machine

struck, the heavy motor, in front of which Walker was sitting, hit the ground before he did. Otherwise he would inevitably have been crushed to death. As the machine weighed over 700 pounds, and as most of this weight lay in the motor, it can be seen that the danger was considerable.

"It was such an accident as would have cost the lives of eight men out of ten," said Adossides. "All that saved Walker was his coolness and presence of mind. The ordinary resources failed him, owing to the short distance he was from the ground, and it took nerve and cool calculation to do what he had to do; but that was the only thing that saved him. It is, with the exception of the small mishaps which he met while he was learning, the first mishap which Walker has had in actual flight."

**TEACHERS MUST BE LOYAL OR QUIT, SAYS
ACTING SUPERINTENDENT OF SCHOOLS**

With "Cox's Gang" as enthusiastic as ever for moral reform, and with no teachers showing any outward or visible signs of resentment against the principal, yesterday was a day of quiet at the Kalihikoi School. "It was all seraphic," as Acting Superintendent of Public Instruction Gibson put it, in his classical way.

Superintendent Gibson, speaking yesterday on the matter of Miss Bertha Scheffer's little passage of arms with Principal Cox, upheld the latter. He remarked:

"The rules and regulations of the department say that the principal of the school shall make such rules and regulations as are necessary for the conduct of the school as are not contrary to the rules of the department. The regulation as to teachers starting work at eight-thirty a. m. has been in force at the Kalihikoi School for some years. Principal Cox did not make any new rule in that respect. He had right on his side."

"And not only that, the teacher must be loyal to the principal and carry out his reasonable instructions to the best of her ability, or quit. It is no excuse for a teacher to say she doesn't like the way the instructions are given. As long as the requirements of the principal are reasonable they should be carried out to the best of their ability by the teachers; otherwise the principal can not be held responsible for the discipline of the school."

**MORMONS IN MEXICO
ASKING FOR DAMAGES**

NEW ORLEANS, May 29.—Mormon settlers in the state of Chihuahua, Mexico, will press claim against the Mexican government aggregating more than a million dollars for damages sustained by them at the hands of insurgents and bandits during the recent revolution, according to Joseph P. Smith, of Salt Lake City, who was here last night en route to Washington.

Unless these claims are settled without delay, said he, the Mormons, who are under the mother church at Salt Lake, will take the complaint to the authorities at Washington. "The Mormons in Chihuahua have suffered more severely from the revolution than any other settlers," said Mr. Smith. "The rebels took what they wanted and gave notes. We now propose to see that these notes are met, and unless Mexico is willing to pay, we will ask the United States government to see that we get justice."

**CUSTOMS OFFICIALS
DISPLEASE GOETHALS.**

NEW ORLEANS, May 30.—Colonel George E. Goethals, chief engineer of the Panama Canal, who arrived here from the Isthmus today from Colon, was worsted in an argument with customs officials who refused to let him have the wharf with his luggage. He returned thoroughly displeased, to his cabin, where he remained until after breakfast.

The immigration officers, apprised of his coming by wireless, sent a special officer to meet the steamer and to assist Colonel Goethals in getting ashore. The custom house, however, not recognizing the colonel, requested him to await the arrival of Captain Miles of the customs office, with instructions. When the official arrived the colonel was so angry that he refused to leave his berth.

Because he said the prohibition question is a political issue and that the church should leave it alone, Governor Colquhoun of Texas has been expelled from the Methodist Church.

EGGS AND BLASTING.

Considerable time was spent by the supervisors discussing eggs and incubators. It was started by the clerk reading a bill from the Sanflower Poultry Yards at Kaimuki, connected by Mrs. F. Turill, containing the following items: "To Fancy eggs in two incubators destroyed by improper blasting, \$50."

This raised a laugh, but when one or two supervisors arose to speak on the question, the laughs subsided. Dwight moved that the matter be referred to the ways and means committee. This brought Ebon Low to his feet with a question as to what the ways and means committee had to do with such a matter. The road committee employees had destroyed the eggs and should pay the bill.

"My reason for referring it to the ways and means committee was because I knew nothing about it," was Dwight's statesmanlike explanation. The matter was finally referred to the road committee and the country attorney.

LE FEBVRE IS DEAD.

PAHIA, June 15.—M. Le Febvre, former statesman and cabinet member, died here yesterday.

CHAIN GANG MEN STRIKE FOR PAY

SUPERVISOR DWIGHT GIVES IN
AND NOW MURRAY WON'T
SIGN THE VOUCHERS.

(From Thursday's Advertiser.)

Chairmen of two committees of the board of supervisors are standing on their dignity as to which shall sign certain vouchers, with the result that some of the parks are becoming overgrown with weeds, trees in and surrounding them are unwatered and a general air of untidiness prevails; and for the same reason prisoners at the county jail are held cooped up within the four walls of that institution, are becoming restless with constant confinement without exercise, and a fight has already been recorded because the prisoners object to the meals which the cook is serving.

The matter came to a head at the meeting of the board of supervisors last night, when Ebon Low, in the role of a peacemaker, attempted to smooth matters over and have the two chairmen kiss and make up, but, like nearly all peacemakers, he came in for one or two hard swats, and really gained nothing for attempting to stop a squabble, which at first seemed trivial, but is now becoming serious.

The row started when Chairman Dwight had the prisoners, in addition to working in the parks, cutting lawns, trimming trees and clearing up gutters, put to work cleaning up rubbish from the streets. Then Chairman Murray of the police committee put in his or and said he objected to prisoners working on the streets, and particularly because they were being paid twenty-five cents a day for their labor.

Prisoners on Strike.

The row has created a scandal to some extent, for it has shown that the prisoners have practically gone on a strike and have taken a stand which the authorities do not know how to deal with. They have not objected to working in the parks, for that is easy work, largely in the shade of trees, and it gives them an eight-hour outing every day, with at least one meal prepared in the park. It has been something on the order of a picnic.

But when they were put to work cleaning up street gutters, dust and mud, it was found to be hard work. They struck. These men in blue denim, the badge of a year's servitude or under, sent to prison as thieves, drunks, vags, wife beaters, etc., decided that they had a little dignity to uphold, and in the name of the "Amalgamated Order of Detained Gentlemen" they would not go out upon the streets unless paid for such work.

The chairman of the police committee took the ground that he was absolutely opposed to prisoners working on the streets, pay or no pay, and refused to sign any vouchers for pay for them. The chairman of the road board was piqued and withdrew all the prisoners, and has been able to do what even the police judge has not been able to effect. He has had them detained under lock and key for two weeks. The prisoners are chafing under this enforced restraint.

Picnic Work.

"Send us out to the parks," they shout. The physician attending them says they should be given exercise. The exercise would consist in using rakes and lawnmowers. The parks would benefit, and those who have access to them would feel that the supervisors were doing their duty, but with the parks filled with tall grass voters are wondering what has gone wrong with the board.

"I would like a settlement of the friction between the two chairmen," said Supervisor Low. "It is a sad error to have a squabble in this board. I therefore move that the charge of the prisoners be left to the road committee."

Chairman Dwight of the road committee wanted it referred to the county attorney. That official said he would have to study it over. Chairman Murray of the police committee said there was no friction except it might be that he was opposed to prisoners working on the streets. He did not object to their working in the parks.

Low said the county paid for their upkeep. The county was not in a position to pay \$1.50 a day to a laborer to clean up streets and gutters, or for work which was really weeding. The city, he said, was overgrown with gutter weeds from one end to the other. He called attention to fights in the prison since they were cooped up and felt that the payment of twenty-five cents a day was not overdoing a proposition.

The motion of Mr. Low was not seconded and the matter will have to be thrashed out between the two chairmen.

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